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THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case No. AC-2011-9

13 **BRIAN TIMOTHY AGNOR**
14 **695 Town Center Drive, Suite 1200**
Costa Mesa, CA 92626

A C C U S A T I O N

15 **Certified Public Accountant**
16 **Certificate No. CPA 92485**

17 Respondent.

18 Complainant alleges:
19

20 **PARTIES**

- 21 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
23 2. On or about June 10, 2005, the California Board of Accountancy issued Certified
24 Public Accountant Certificate Number CPA 92485 to Brian Timothy Agnor (Respondent). The
25 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on November 30, 2011, unless renewed.
27
28

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

6. Section 5063 of the Code requires a licensee to report in writing to the Board within 30 days all felony convictions and convictions of any crime: related to the qualifications, functions or duties of a licensee or committed in the course and scope of practice of public accountancy; or involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.

7. Section 5100 of the Code states in pertinent part as follows:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

1 "(a) Conviction of any crime substantially related to the qualifications,
2 functions and duties of a certified public accountant or a public accountant.

3 8. Section 5106 of the Code states:

4 "A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the meaning of this article. The
6 record of the conviction shall be conclusive evidence thereof. The board may
7 order the certificate or permit suspended or revoked, or may decline to issue a
8 certificate or permit, when the time for appeal has elapsed, or the judgment of
9 conviction has been affirmed on appeal or when an order granting probation is
10 made, suspending the imposition of sentence, irrespective of a subsequent order
11 under the provisions of Section 1203.4 of the Penal Code allowing such person to
12 withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the
13 verdict of guilty or dismissing the accusation, information or indictment."

14 9. Section 5107(a) of the Code states:

15 "The executive officer of the board may request the administrative law
16 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
17 holder of a permit or certificate found to have committed a violation or violations
18 of this chapter to pay to the board all reasonable costs of investigation and
19 prosecution of the case, including, but not limited to, attorneys' fees. The board
20 shall not recover costs incurred at the administrative hearing."

21 10. Section 5109 of the Code provides that the expiration, cancellation, forfeiture or
22 suspension of a license shall not deprive the CBA of jurisdiction to proceed with any
23 investigation of or action or disciplinary action against the licensee, or to render a decision
24 suspending or revoking a license.

25 11. Title 16 of the California Code of Regulations, section 99, states:

26 For the purposes of denial, suspension, or revocation of a certificate or
27 permit pursuant to Division 1.5 (commencing with Section 475) of the Business
28 and Professions Code, a crime or act shall be considered to be substantially related
to the qualifications, functions or duties of a certified public accountant or public
accountant if to a substantial degree it evidences present or potential unfitness of a
certified public accountant or public accountant to perform the functions
authorized by his or her certificate or permit in a manner consistent with the public
health, safety, or welfare. Such crimes or acts shall include but not be limited to
those involving the following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

(b) Fraud or deceit in obtaining a certified public accountant's certificate or a
public accountant's permit under Chapter 1, Division III of the Business and

1 Professions Code;

2 (c) Gross negligence in the practice of public accountancy or in the
3 performance of the bookkeeping operations described in Section 5052 of the code;

4 (d) Violation of any of the provisions of Chapter 1, Division III of the
5 Business and Professions Code or willful violation of any rule or regulation of the
6 board.

7 12. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/
8 Director may request the administrative law judge to direct a licensee found to have committed a
9 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
10 investigation and enforcement of the case.

11 **FIRST CAUSE FOR DISCIPLINE**
12 **(Conviction for Indecent Exposure)**

13 13. Respondent has subjected his license to disciplinary action for unprofessional conduct
14 under Code sections 5100(a) and 490 in that he was convicted of a crime substantially related to
15 the qualifications, functions or duties of a licensee. On or about July 19, 2010, in a criminal
16 proceeding entitled *People v. Brian Timothy Agnor* in Orange County Superior Court, Case
17 Number 09CM06532, Respondent was convicted by plea of guilty to one count of Penal Code
18 section 314(1) (indecent exposure), a misdemeanor, based upon events which took place in 2009.
19 The circumstances surrounding the conviction are as follows:

20 14. On or about May 14, 2009, Respondent in violation of Penal Code section 314(1)
21 Respondent did wilfully, lewdly, and unlawfully expose his person and private parts in a public
22 place where there were present other persons to be offended and annoyed thereby.

23 15. On or about July 19, 2010, Respondent was sentenced to three (3) years formal
24 probation, 90 days in Orange County Jail, 30 of which were stayed on condition of successful
25 completion of probation, a restitution fine in the amount of \$100, and a \$100 Probation
26 Revocation Restitution Fee, which was suspended unless his parole is revoked. Respondent
27 thereafter served sixty days in the Orange County Jail. Respondent is now a registered sex
28 offender.

**SECOND CAUSE FOR DISCIPLINE
(Failure to Report Convictions)**

16. Respondent is subject to discipline under section 5063(a)(1)(A-B) of the Code in that he failed to report his conviction, as detailed in paragraphs 13 to 15, above, to the Board within thirty days after it was entered by his guilty plea made on July 19, 2010.

PRAYER

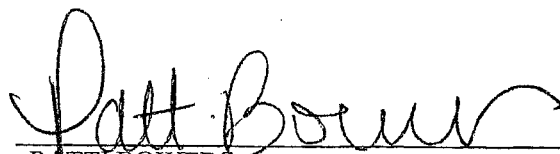
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number CPA 92485, issued to Brian Timothy Agnor;

2. Ordering Brian Timothy Agnor to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/9/2011



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant